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9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE DISTRICT OF ARIZONA

11 UNITED STATES OF AMERICA,) NO. CR 08-303-TUC-DCB(CRP)
12 Plaintiff,)
13)
14 vs.) **MOTION TO SUPPRESS**
15) **STATEMENTS**
16 CHRISTOPHER MATHEW)
17 CLEMENTS,)
18 Defendant,)
19 _____)

20 **COMES NOW** Mr. Clements, by and through undersigned counsel of record, John
21 D. Kaufmann, and requests that this court suppress all evidence seized in violation of
22 Miranda v. Arizona and the 5th and 6th Amendments to the United States
23 Constitution. See attached memorandum.
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1 **MEMORANDUM**

2 **I. STATEMENT OF THE CASE**

3 Mr. Clements is charged in one count Indictment alleging violation of Title 18,
4 United States Code §2250(a). The Count alleges that Mr. Clements did knowingly
5 fail to register and update a registration as required by the sex offender registration
6 and notification act, after traveling interstate commerce into the State of Arizona in or
7 about October 2007.
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10 **II. STATEMENT OF FACTS**

11 On October 5, 2007 Mr. Clements was seized by police officers from the
12 Tucson Police Department at 665 West 22nd Street in Tucson, Arizona. A Circle K is
13 located at that address. Mr. Clements arrived at the Circle K and exited his vehicle.
14 As he was exiting his vehicle, Mr. Clements was surrounded by several Tucson
15 Police Department officers and arrested. Mr. Clements was handcuffed and his
16 vehicle was searched. No Miranda warnings were given to Mr. Clements. After a
17 search of Mr. Clements and his vehicle produced no drugs or contraband, Mr.
18 Clements was arrested for giving false information to a police officer.
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21 **III. ISSUE**

22 WHETHER STATEMENTS AND EVIDENCE RECEIVED IN
23 VIOLATION OF MR. CLEMENTS 5TH AND 6TH AMENDMENT RIGHTS
24 REQUIRE SUPPRESSION.
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1 **IV. ARGUMENT**

2 STATEMENTS AND EVIDENCE RECEIVED IN VIOLATION OF MR.
3 CLEMENTS 5TH AND 6TH AMENDMENT RIGHTS REQUIRE SUPPRESSION.
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5 Mr. Clements moves to suppress all statements made as a result of law
6 enforcement interrogation without the prophylactic protections guaranteed in
7 Miranda v. Arizona, 384 U.S. 436(1966). Miranda establishes procedural safeguards
8 to secure the privilege against self incrimination. Id. Under Miranda defendants
9 must be advised of their 5th Amendment right to remain silent and their 6th
10 Amendment right to counsel before custodial interrogation can begin. Id.
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12 Police officers are not required to administer Miranda to everyone they
13 question. Oregon v. Mathiason, 429 U.S. 492(1977). Miranda only applies to
14 custodial interrogation. See Berkemer v. McCarty. Custody is defined in Miranda as
15 “as soon as the suspect has been deprived of his freedom in any significant way”.
16 Miranda v. Arizona, supra at 444. This definition was narrowed in California v.
17 Behler, to an individual whose freedom is limited to a degree associated with formal
18 arrest. 463 U.S. 1121(1983).
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20 The issue in this case is custodial interrogation. Mr. Clements is seized
21 outside the Circle K by law enforcement. He is removed from his vehicle, searched
22 and handcuffed. He is placed in a sitting position while officer go through his
23 vehicle. Under a totality of circumstances test, a reasonable person would understand
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1 that he is under arrest and not free to go. See Stansbury v. California, 511 U.S.
2 318(1994).

3 No Miranda warnings were given to Mr. Clements. He was interrogated for a
4 period of approximately 30 minutes. No drugs were found on his person. No drugs
5 were found in his vehicle. He was not free to go.

7 Any evidence seized as a result of violation of Mr. Clements 5th and 6th
8 Amendment rights must be suppressed. Mr. Clements requests this court suppress
9 any statements he made or any fruits gathered as a result of his unlawful custodial
10 interrogation. See Wong Sun v. Ohio, 371 U.S. 471(1963).

12 **RESPECTFULLY SUBMITTED** this 2nd day of April, 2008.

14 s/ John D. Kaufmann
15 John D. Kaufmann
16 Attorney for Defendant
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